

**STATE OF TENNESSEE**  
OFFICE OF THE  
**ATTORNEY GENERAL**  
425 Fifth Avenue North  
NASHVILLE, TENNESSEE 37243-0497

December 23, 2002

Opinion No. 02-135

Disposition of Real Estate Assets of Chattanooga Public Television Station

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**QUESTIONS**

1. Can The Greater Chattanooga Public Television Corporation transfer title to real property that previously was transferred to it by the State, or are there restrictions or reversions in the event of a transfer to a third party?
2. In the event it is necessary to encumber the present real estate to secure a loan for expansion and improvement, is the State of Tennessee a necessary party to consent to the execution of a deed of trust on the existing property to secure the loan?
3. If there are no restraints on transfer, would the proceeds of such transfer be considered to be impressed with an implied trust so that such proceeds can only be used for public television purposes?

**OPINIONS**

1. The Greater Chattanooga Public Television Corporation may transfer title to its real property. There are no restrictions or reversions in the event of a transfer to a third party. The Attorney General must be given notice prior to the transfer of title to the real estate.
2. The State of Tennessee has no interest in the real property and, therefore, is not a necessary party to consent to a deed of trust on the real property to secure the repayment of a loan.
3. The proceeds of any such transfer or sale of the real property must be used consistently with the terms of the Charter describing the corporate purpose. Depending on the circumstances, an implied trust may result by implication of law or by demands of equity. The Attorney General is charged, under the non-profit code, to protect the public's interest in the transaction.

## ANALYSIS

The legislature enacted the Tennessee Public Broadcasting Act of 1984 (“the Act”) and expressed its intent “to bring about the orderly transfer of licenses and operational responsibilities for state-owned educational television stations to appropriate local community agencies, and to encourage the further development of public television broadcasting in Tennessee.” TENN. CODE ANN. § 49-50-902. Ownership and control of stations then licensed to the State Board of Education would be transferred to new or existing not-for-profit corporations and such transfer was to be accomplished by not later than July 1, 1986. TENN. CODE ANN. § 49-50-904.

Pursuant to these statutes, the Tennessee State Board of Education and The Greater Chattanooga Public Television Corporation entered into an Agreement dated March 26, 1984, for the assignment of the WTCI license and the transfer of real and personal property and other assets (“the Assets”) of the noncommercial educational television station WTCI-TV located on the campus of Chattanooga State Technical Community College. The Agreement is recorded in Book 3532, Page 554 in the Register of Deeds Office for Hamilton County, Tennessee. The Agreement was also subject to the prior consent and approval of the Federal Communications Commission (“FCC”). The Tennessee State Board of Education later transferred the Assets to The Greater Chattanooga Public Television Corporation by Bill of Transfer dated June 20, 1984. The Bill of Transfer is recorded in Book 3532, Page 561 in the Register of Deeds Office for Hamilton County, Tennessee.

According to your request, because of the need for substantial expenditures for the additional space for fulfilling the FCC’s requirements for conversion to digital television, The Greater Chattanooga Public Television Corporation (“Chattanooga Public TV”) is considering an alternative location which would require that it move from, and dispose of, the real estate presently deeded to it and which it occupies on the Chattanooga State campus.

1. The Agreement and the Bill of Transfer do not prohibit the transfer of real property owned by Chattanooga Public TV. These documents, likewise, do not contain restrictions or reversions in the event of a transfer of the real property. The Agreement specifically provides in Paragraph 2(c): “It is further agreed that, effective upon closing and thereafter, State Board of Education shall have no control over, or right to intervene or participate in, the operations of the Station.”

The Charter for Chattanooga Public TV, a non-profit corporation, is dated April 28, 1982 and was filed May 5, 1982 with the Secretary of State’s Office. The corporate purpose is described in Paragraph 5 of the Charter:

To bring about the orderly transfer of the licenses and operational responsibilities of Station WTCI, Channel 45 to the Corporation from the Board of Education of the State of Tennessee, and upon said transfer to operate Station WTCI as a public television station. The Corporation is organized and operated exclusively for educational

purposes as a tax-exempt organization within the meaning of 26 U.S.C. Section 501(c)(3).

To own or lease the facilities, establish the policies, promote the funding and facilitate the operation of Station WTCL.

To solicit funds, gifts and endowments from individuals, corporations, trusts, foundations and other donors and to seek funding from the State of Tennessee to be used solely for the operation and improvement of the said public television station, WTCL, now being operated as a part of Tennessee Educational Television Network.

The entire income, assets and endowment shall be held and distributed solely for the purposes set out above and no part of the income, funds, property or assets of the Corporation shall inure to the benefit of any individual. No part of the activities of the Corporation shall be the carrying on of propaganda or otherwise attempting to influence legislation and it shall not participate nor intervene in (including the publishing or distributing of statements) any political campaign on behalf of any candidate for public office or any referendum.

In addition, Paragraph 7 provides:

Subject to its purposes as described in Section 5 hereof, the Corporation shall have all the rights, powers, privileges and benefits conferred upon corporations by the laws of the State of Tennessee.

Pursuant to TENN. CODE ANN. § 48-53-102(a)(5), Chattanooga Public TV may, unless its charter provides otherwise, “sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of, or grant a security interest in, all or any part of its property.” As shown above, the charter does not appear to prohibit any such sale. However, Paragraph 5 states: “The entire income, assets and endowment shall be held and distributed solely for the purposes set out above and no part of the income, funds, property or assets of the Corporation shall inure to the benefit of any individual.” Therefore, the proceeds of any such sale must be used consistently with the corporate purpose described in the Charter.

Chattanooga Public TV would need to comply with the requirements of TENN. CODE ANN. § 48-62-102 (sale of assets other than in regular course of activities). TENN. CODE ANN. § 48-62-102(g) provides:

A public benefit corporation must give written notice to the attorney general and reporter at least twenty (20) days before it sells, leases,

exchanges or otherwise disposes of all, or substantially all, of its property in a transaction not in the usual and regular course of its activities unless the attorney general and reporter has given the corporation a written waiver of this subsection.

*See also* TENN. CODE ANN. § 48-51-701 (requiring notice and consent of the Attorney General).

2. As discussed above, the State of Tennessee has no interest in the real property owned by Chattanooga Public TV, and therefore would not be a necessary party to consent to the execution of a deed of trust on the real property to secure the repayment of a loan. The Attorney General and Reporter, however, may need to consent to the sale of the assets.

3. As discussed above, the proceeds of any such transfer or sale of the real property owned by Chattanooga Public TV must be used consistently with the terms of the Charter describing its purposes. Any sale agreement, deed of trust, or contract could contain restrictions on the use of such proceeds and require that the proceeds be used in a manner consistent with the purposes set forth in the Charter of Chattanooga Public TV. Depending on the circumstances, an implied trust may result by implication of law or by demands of equity. See Black's Law Dictionary, 1354 (5th ed. 1979). Further, in TENN. CODE ANN. § 48-51-701(c)(5) the Attorney General has the responsibility to protect the public's interest with respect to the transaction.

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